



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, LRE, LAT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 12, 2021. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed that he received and was able to open all of the Tenant's evidence, and did not take issue with the service of those documents, including the digital evidence. I find the Tenant sufficiently served the Landlord with her application and evidence for the purposes of this hearing.

The Landlord did not submit any documentary evidence and relied on oral testimony only.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice)

Issues to be Decided

- Should the Notice be cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on October 15, 2020. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlord indicated one of his children would be moving in.

In the hearing, the Landlord stated that this rental unit is a self-contained suite in lower floor of his house. The Landlord stated that it is his son who needs the space to live in, because currently, his son is living upstairs with him and there is not enough room. The Landlord stated that he is a "conservative" man and doesn't want his son to spend too much time with his girlfriend within his home. As a result, the son wants to move into this rental unit, in the basement, so that he can have his girlfriend over, and they can all have more space.

The Tenant stated that she believes the Landlord is not acting in good faith. More specifically, the Tenant stated that the Landlord issued this Notice after the relationship became strained. The Tenant stated that back in May 2020, there was a leak in the ceiling of the rental unit. Further, the Landlord also had to replace a boiler which serviced the whole house. The Landlord completed this boiler replacement sometime in early July 2020. The Tenant stated that it was around that time that the pipes in the

ceiling of the rental unit became very noisy, and annoying for her. The Tenant stated she tried to live with the extra noise for some time but eventually told the Landlord of the issue with the noisy pipes, via text message, at the end of September 2020.

The Tenant stated that the Landlord sent a plumber to inspect, and potentially fix, the ceiling in early October. In the days following that the Tenant realized that the noise was still prevalent. The Tenant again informed the Landlord that the issue was still affecting her. The Tenant stated that the plumber came back again, a couple of times. The Tenant spoke to issues they had scheduling a time for the Landlord to come in with the plumber, and that the Landlord was getting frustrated with her. The Tenant stated that she asked for the Landlord to give her proper formal notice to enter, at least 24 hours ahead of time. The Tenant stated that on October 9, 2020, she gave the Landlord a written and formal list of times that she was available to let the Landlord in to look at the plumbing issue. The Tenant stated that she got both a 24 hours repair notice (notice to enter) and a 2-Month Notice to End Tenancy on October 15, 2020.

The Tenant opines that the Landlord really had no intention to fix the issue, and did not proactively engage with the plumber to have the noisy pipes fixed. The Tenant provided excerpts from different text message conversations she has had with the Landlord. However, not all of the messages are dated, nor does it appear to be a complete record of what was said. The Tenant also provided videos of the noise, and issues with the ceiling, including the holes in the drywall.

The Landlord explained that this eviction has nothing to do with the repairs, and insists that he needs the rental unit because his 27 year old son wants more space. The Landlord stated that there were issues with a small leak in the ceiling and a boiler replacement, but these issues were resolved in the early summer.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as indicated on the Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this Notice in bad faith and it was issued because the Tenant has pushed for repairs to be made to the noisy plumbing pipes in the ceiling.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that he, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

B. GOOD FAITH

When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

[...]

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I have considered the testimony and the evidence on this matter, in totality. I note the relationship between the Landlord and the Tenant became somewhat strained and contentious leading up to the issuance of the Notice. The Tenant has provided some documentary evidence and testimony to show that she and the Landlord were in the process of working together to try and investigate some noisy pipes in the Tenant's ceiling, and were having a difficult time scheduling times, and agreeing as to what needed to be done.

I note the Landlord stated that he wants the rental unit so that his son can move in. However, I note the Landlord did not provide any corroborative documentary evidence (such as affidavits, written statements, or other supporting documentation) to show his son has a plan to move into the rental unit. The Landlord simply stated that his son wants extra space, given his age, and the fact that he still lives upstairs with them. However, given the contentious situation, leading up to the issuance of the Notice, I do not find this is sufficient to demonstrate the Landlord's good faith intentions.

In making this determination, I note there is evidence to suggest that the Tenant started increasing her pressure on the Landlord to repair the noisy pipes in the weeks leading up to the issuance of the Notice. Further, the Tenant also had contentious interactions

regarding making the repairs, asking the Landlord to give proper notice to enter the unit, and what exactly needed to be done in order to sufficiently address the issue with the noisy pipes. The Landlord served this Notice a matter of days after a series of negative interactions about the ceiling. The nature and timing of these interactions leads me to question the good faith intentions of the Landlord, especially given the lack of corroborative evidence showing the Landlord's son has a need and a plan to occupy the space. I do not find the Landlord's testimony, and his explanations are sufficient to demonstrate his good faith intentions.

In this case, the onus is on the Landlord to substantiate the Notice and importantly, his good faith intentions. I do not find he has sufficiently done this. Therefore, the Tenant's application is successful and the Notice received by the Tenant on October 15, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 12, 2021

Residential Tenancy Branch